

OGC 70-0333

27 February 1970

OGC Has Reviewed

MEMORANDUM FOR: Legislative Counsel

SUBJECT: Draft Revision of 50 U.S.C. 783(b)

STATINTL 1. [] and I have examined and discussed the attached draft revision and the changes suggested by Mr. Sourwine which are indicated in green ink. Mr. Sourwine's changes would delete the coverage of former officers or employees of Government corporations and would broaden the coverage of subsection (b)(2) to include persons communicating classified information to unauthorized persons, whether or not they had reason to believe the recipient was authorized to receive such information. We also considered the risks inherent in the language covering attempts to communicate classified information.

2. We consider it desirable to retain the proposed language covering former officers or employees of Government corporations as well as of Government agencies. As a practical matter, prosecution would not be sought unless the defendant clearly should have known of the classified nature of the information he was communicating; and if this were the case, it seems unlikely that the prosecution's position would be weakened at all by the fact that the defendant was a former rather than a current employee of the Government or even of a Government corporation at the time he violated the statute.

3. A court might take a jaundiced view of a prosecution for an attempt to communicate if the Government were not selective in the type of case it chose to bring. We would not contemplate any prosecution under the attempt provision unless there was a clear cut case, probably involving a defendant caught in flagrante delicto. On balance it seems worthwhile to retain the attempt provision.

4. We think that Mr. Sourwine's suggested change, which would cover communication of classified information to a person not authorized to receive it without regard to the defendant's having a possible reason to believe the recipient was so authorized, is a risky expansion of the Act's coverage. We prefer the language as originally drafted which limits violations to those cases where the defendant has reason to believe the recipient is a person not authorized to receive such classified information. Again, we think prosecution would be confined to cases where the defendant's position and experience would leave him with no credible argument of a reason to assume the recipient's authority.

5. The draft revision without Mr. Sourwine's suggested changes would certainly be a substantial step forward and provide an opportunity for prosecution in many cases where it is not now available. We assume that prosecution would never be attempted unless the Government had a very strong case, and we think that the draft revision is the stronger for being the first one of its kind formally supported by the Department of Justice.

STATINTL


Assistant General Counsel

Attachment

OGC:JDM:bg

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50 U.S.C. 783(b)

Line one, following "employee," add "or former officer or employee." Line 4, following "communicate," add "or attempt to communicate." Line 5, following "means," delete through "title" in line 9. Line 13, following "classified," delete the remainder of the paragraph and substitute "to any other person whom such officer, or employee or such former officer or employee knows or has reason to believe to be:

- (1) an agent or representative of any foreign government, or any officer or member of any Communist organization as defined in paragraph (5) of Section 782 of this title, unless such officer or employee, or such former officer or employee shall have been specifically authorized by the President, or by the head of the department, agency or corporation by which this officer or employee is or was employed, to make such disclosure of such information; or
- (2) a person not authorized by the President (or by the head of any such department, agency or corporation with the approval of the President) to receive such classified information.

Draft Revision of 50 U.S.C. 783 (b)
Communication of Classified Information
By Government Officer or Employee
or Former Officer or Employee
(Additions to Existing Law Underscored)

(b) It shall be unlawful for any officer or employee, or
former officer or employee, of the United States or of any department
or agency thereof, ^{any officer or employee} or of any corporation ^{the} stock of which is owned in
whole or in major part by the United States or any department or agency
thereof, to communicate, or attempt to communicate, in any manner or
by any means any information of a kind which shall have been classified
by the President (or by the head of any such department, agency or corpo-
ration with the approval of the President) as affecting the security of the
United States, knowing or having reason to know that such information has
been so classified, to ⁽¹⁾ any other person ⁽²⁾ whom such officer, or employee or
such former officer or employee knows or has reason to believe to be
⁽³⁾ an agent or representative of any foreign government,
or any officer or member of any Communist organi-
zation as defined in paragraph (5) of Section 782 of
this title, unless such officer or employee, or such

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former officer or employee shall have been specifically authorized by the President, or by the head of the department, agency or corporation by which this officer or employee is or was employed, to make such disclosure of such information; or

(2) ^{any other} a person not authorized by the President (or by the head of any such department, agency or corporation with the approval of the President) to receive such classified information.